

# MONTANA DEPARTMENT OF JUSTICE GAMBLING CONTROL DIVISION

## ANNUAL REPORT

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**ATTORNEY GENERAL**  
**STATE OF MONTANA**



Marc Racicot  
Attorney General

Justice Building  
Helena, Montana 59620

January 21, 1991

Honorable Members of the 52nd  
Montana Legislature  
State Capitol  
Helena, Montana 59620

Dear Legislators:

In compliance with 2-15-2021, MCA, I submit the following report of the Gambling Control Division of the Department of Justice.

In 1989, the Legislature enacted comprehensive revisions in Montana's public gambling laws through adoption of Senate Bill No. 431 (SB 431). SB 431 transferred responsibility for regulating gambling from the Departments of Commerce and Revenue and local governments to the Department of Justice. The intent of the bill was to create and maintain a uniform regulatory climate for gambling in this state.

On July 1, 1989, staff from the Video Gaming Control Bureau of the Department of Commerce were transferred to the Department of Justice. In addition, several staff members from the Department of Revenue's Investigation and Enforcement Bureau were hired to create a gambling investigation unit. Together staff from these two agencies formed the core of the new Gambling Control Division. Fiscal year 1990 was the Division's first year of operation.

The purpose of this report is to provide basic information to assist you in making legislative decisions on gambling issues. This document provides a statistical overview of gambling-related activities, a report on the distribution of gambling revenues to state funds and local governments, an account of the Gambling

Members/52nd Legislature

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Control Division's first year activities, a discussion on issues addressed by the Division, and a summary of the Department's proposed gambling legislation.

My office and the staff of the Gambling Control Division are available to provide assistance and answer your questions regarding the gambling laws, administrative rules, or Gambling Control Division activities.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marc Racicot", written in a cursive style.

MARC RACICOT  
Attorney General

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## INTRODUCTION

According to the Article III, section 9 of the Montana Constitution, all forms of gambling are prohibited unless authorized by the Legislature or by the people through initiative or referendum. Currently, the state has nine forms of legalized gambling: video gambling machines (bingo, keno, and poker), live card games (bridge, cribbage, hearts, panguingue, pinochle, pitch, poker, rummy, solo, and whist), live bingo, live keno, raffles, sports pools, Calcutta pools, horse racing, and the Montana lottery.

In 1989, the Legislature adopted comprehensive legislation (Senate Bill No. 431) transferring regulation of all forms of legal and illegal gambling, except horse racing and the lottery, from local governments and the Departments of Commerce and Revenue to the Department of Justice under the leadership of the Attorney General. The Attorney General created a new agency, the Gambling Control Division, to regulate the gambling activities under the Department's jurisdiction.

The statutes administered by the Gambling Control Division are found in Title 25, chapter 5, parts 1 through 6 of the Montana Code Annotated (MCA). Section 23-5-112, MCA, defines gambling as risking something of value (i.e., money, credit, property) for a gain that is contingent in whole or in part upon chance or the operation of a gambling device or gambling enterprise. The Department's jurisdiction extends only to public gambling, which is defined as gambling conducted in a place to which the public has access or a place of public resort, including a facility operated by a corporation, club, or fraternal order (23-5-111 and 23-5-112, MCA). The Legislature assigned the Department responsibility to administer the gambling laws, including the authority to adopt rules, license gambling

activities, collect and distribute gambling revenues, conduct investigations, and enforce the gambling statutes. The following tables describe the licenses and permits issued and taxes collected by the Department and the distribution of the gambling proceeds.

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### GAMBLING LICENSES

<u>TYPE</u>	<u>COST</u>	<u>DISTRIBUTION</u>	<u>STATUTORY CITE (MCA)</u>
Operator's	0	N/A	23-5-177, MCA
Card Dealer's	\$75 1st yr <sup>1</sup> \$25 to renew	100% retained by Department of Justice	23-5-308, MCA
Manufacturer- Distributor's	\$1,000/yr <sup>2</sup>	100% retained by Department of Justice	23-5-625, MCA
Manufacturer of Gambling Devices Not Authorized in Montana	\$1,000/yr <sup>3</sup>	100% retained by Department of Justice	23-5-152, MCA

<sup>1</sup>No fee is charged for a temporary card dealer's license. (23-5-308, MCA)

<sup>2</sup>In addition to this fee, the applicant must pay a one-time administrative fee to cover the cost of processing the application. Any amount not needed to cover processing costs is refunded. The Department retains the processing fee. (23-5-625, MCA)

<sup>3</sup>No license fee is charged if the manufacturer-distributor is licensed as a manufacturer-distributor under 23-5-625, MCA. (ARM 23.16.2001)

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### GAMBLING PERMITS

<u>TYPE</u>	<u>COST</u>	<u>DISTRIBUTION</u>	<u>STATUTORY CITE (MCA)</u>
Live Card Game Table	\$250/yr for 1st table  \$500/yr for each add'l table	\$100/table retained by Department of Justice with remainder to local governments	23-5-306, MCA
Live Bingo/ Keno	\$500/yr for each premises <sup>4</sup>	100% retained by Department of Justice	23-5-407, MCA
Video Gambling Machine	\$200/yr for each machine	\$100/machine retained by Department of Justice with remainder to local governments	23-5-612, MCA

<sup>4</sup>An organization qualified for exemption under 26 U.S.C. 501(c)(3) or (c)(4) on 01/15/89 is exempt from the live bingo/keno permit fee. An organization qualified for exemption after that date is exempt from one-half the permit fee. (23-5-406, MCA)

### GAMBLING TAXES

<u>TYPE</u>	<u>COST</u>	<u>DISTRIBUTION</u>	<u>STATUTORY CITE (MCA)</u>
Live Bingo/ Keno	Greater of 5% of net income or 1% of gross proceeds for each game (pd. annually) <sup>5</sup>	100% to local governments	23-5-409, MCA
Video Gambling Machine	15% of net machine income (pd. quarterly)	33 1/3% to state general fund and 66 2/3% to local governments	23-5-610, MCA

<sup>5</sup>An organization qualified for exemption under 26 U.S.C. 501(c)(3) or (c)(4) is exempt from the live bingo/keno tax (23-5-406, MCA)



## **I. GAMBLING STATISTICS**

The following chapter provides a statistical overview of gambling-related activities for fiscal year 1990 (July 1, 1989 through June 30, 1990) and the first and second quarters of fiscal year 1991 (July 1 through December 31, 1990). The first section describes the type and number of licenses issued by the Department of Justice. Then information on the various forms of legal gambling is presented. When available, data from previous fiscal years is provided to demonstrate trends. The chapter concludes with information on the amounts wagered on selected gambling activities.

### **A. LICENSES**

As noted earlier, the Department of Justice issues four types of gambling licenses: an operator's, card dealer's, manufacturer-distributor's, and manufacturer-distributor's license for producing devices illegal in Montana. Before issuing a license, the Department is required to determine whether the applicant is qualified for licensure under 23-5-176, MCA. Because of the volume of applications and the length of time needed to determine if an applicant is qualified, the Department initially issues a provisional license to the applicant if the required information and documents are submitted and no adverse information is detected upon initial screening. After completing the background investigation, the Department may issue an annual license to a qualified applicant or revoke the provisional license for an unqualified applicant. When issuing an annual license, the Department may place conditions on a license (23-5-115, MCA).

**Operator's Licenses.** Before a person may offer gambling to the public, he or she must obtain an operator's license. In addition, a person seeking to conduct a live card game or operate video gambling machines must possess a license to sell alcoholic beverages for on-premises consumption.<sup>1</sup> A liquor license is not required to provide other forms of gambling. There is no fee for an operator's license.

The number and classification of operator's licenses issued in fiscal year 1990 and the first two quarters of fiscal year 1991 are as follows:

<u>License Classification</u>	<u>FY 90</u>	<u>FY 91</u>
Annual	1,490	1,467
Provisional	310	299
Conditional		1
	<hr/>	<hr/>
<b>Total</b>	<b>1,800</b>	<b>1,767</b>

**Card Dealer's Licenses.** A card dealer's license is required to deal cards in a live card game involving gambling. An applicant obtains a temporary dealer's license upon mailing to the Department of Justice the application documents available at a local driver license station. There is a \$75 fee for first-time applicants, and a \$25 fee for license renewal. Statistics on card dealer's licenses processed from October 1, 1989 through December 31, 1990 are as follows:

Applications Received	706
Annual Licenses Issued	626
Conditional Licenses Issued	14
Applications Pending	41
Applications Withdrawn	13
Applications Denied	12

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<sup>1</sup> Certain "grandfather" provisions allow card game table and video gambling machine permits to be issued to a person who legally operated a table or machine on January 15, 1989, but did not have a liquor license on that date (23-5-306 and 23-5-611, MCA).

Section 23-5-176, MCA, requires the Department of Justice to issue a gambling license unless the Department can demonstrate that the applicant is a person whose prior activities or criminal record: (1) poses a threat to the public interest of the state or the effective regulation and control of gambling; or (2) creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the carrying on of the business and financial arrangements incidental to gambling. In addition, the Department may deny a license if the applicant is receiving a substantial amount of financing from an unsuitable source. Among the 642 dealer's license applications submitted from September 1, 1989 through September 30, 1990, 161 applicants (25 percent) had been convicted of one or more criminal offenses.<sup>2</sup> Among those with a criminal record, 117 applicants (73 percent) were convicted of misdemeanor offenses only. The remaining 44 applicants (27 percent) were convicted of one or more felony offenses; some of these applicants also had misdemeanor convictions.

**Manufacturer-distributor's Licenses.** A person must obtain a license from the Department before manufacturing, selling, distributing, or leasing video gambling machines in the state. The fee for the license is \$1,000 a year plus an administrative fee for first-time applicants to cover the cost of processing the application. The following number of licenses were issued in fiscal year 1990 and the first two quarters of fiscal year 1991:

<u>License Type</u>	<u>FY 90</u>	<u>FY 91</u>
Manufacturer-distributor	125	126

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<sup>2</sup>Criminal offenses include DUIs and other misdemeanor and felony offenses but not minor traffic offenses.

**Manufacturer-distributor's Licenses (Illegal Devices).** State law permits a person to manufacture, for export, gambling devices that are not legal in Montana, if a license is obtained from the Department. The license fee is \$1,000 per year. The fee is waived if the applicant also has a license to manufacture devices that are legal in Montana. Currently, there are two businesses licensed to manufacture illegal gambling devices.

## **B. VIDEO GAMBLING MACHINES**

The patterns of growth in video gambling machine play may be demonstrated by the number of machine permits issued, average net daily and annual income earned by machine type, and tax revenue generated. These indicators are presented separately with a brief explanation of each.

**Video Gambling Machine Permits: Fiscal Year 1990.** Because of the permit provisions in Senate Bill No. 431 (SB 431) enacted by the 1989 Legislature, permits for video gambling machines were issued during two periods in fiscal year 1990. The effective date of the permit provisions in SB 431 was October 1, 1989. Because permits expire on June 30 of each year, the first quarter of fiscal year 1990 was covered by the pre-SB 431 law. The time overlap, however, was provided for in SB 431; the Department of Justice was directed to prorate the old permit fee for the first quarter of fiscal year 1990. Thus, from July 1 through September 30, 1989, the Department issued permits at the rate of \$25, one-quarter of the \$100 annual fee. As required by statute, first quarter fees were retained by the Department for gambling regulation.

For the period October 1, 1989 through June 30, 1990, the Department administered a second permit period and charged the full \$200 annual fee as required by law. Also as required by

law, one-half of this fee was distributed to local governments, and the Department retained the remainder. The following charts present fiscal year 1990 permit information according to the two permit periods.

**JULY 1, 1989 TO SEPTEMBER 30, 1989 PERMIT PERIOD**

<u>Machine Type</u>	<u>Permits Issued</u>
Poker	4,942
Keno	3,981
Bingo	20
	<hr/>
<b>Totals</b>	<b>8,943</b>

**OCTOBER 1, 1989 TO JUNE 30, 1990 PERMIT PERIOD**

<u>Machine Type</u>	<u>Permits Issued</u>
Poker	6,223
Keno	4,803
Bingo	22
	<hr/>
<b>Totals</b>	<b>11,048</b>

**Video Gambling Machine Permits: Fiscal Years 1986 Through December 31, 1990.** The table and graph on the following page illustrate the growth in the number of video gambling machine permits issued from fiscal years 1986 through the second quarter of fiscal year 1991.

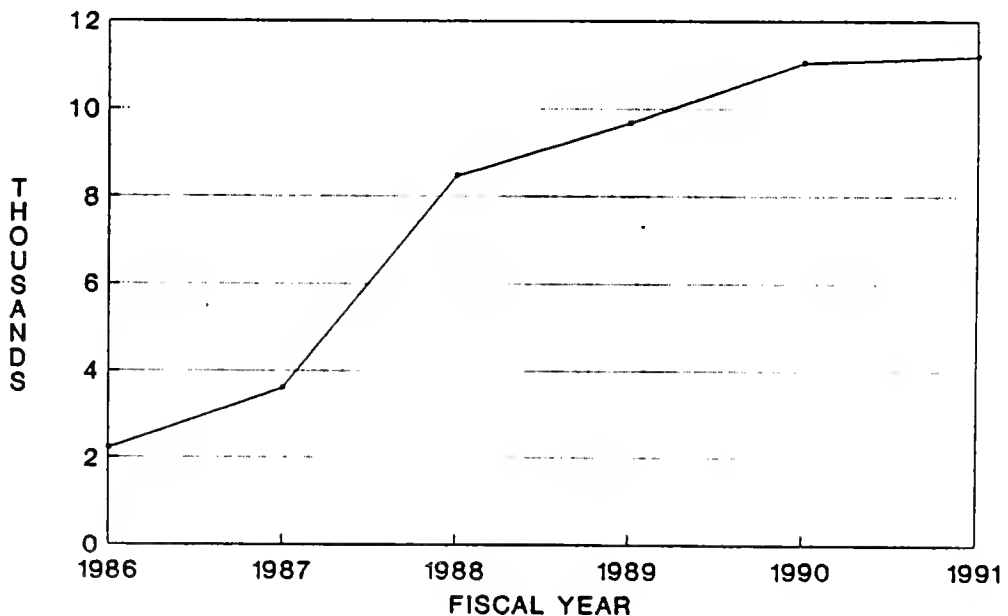
**VIDEO GAMBLING MACHINE PERMITS ISSUED**  
**Fiscal Years 1986 - 1991**

<u>Machines</u>	<u>FY 86<sup>1</sup></u>	<u>FY 87<sup>1</sup></u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>	<u>FY 91<sup>2</sup></u>
Poker	2210	3600	4564	5107	6223	6690
Keno			3786	4502	4803	4624
Bingo			112	60	22	0
<b>TOTAL</b>	<b>2210</b>	<b>3600</b>	<b>8462</b>	<b>9669</b>	<b>11,048</b>	<b>11,314</b>

<sup>1</sup>For fiscal years 1986 and 1987, the state licensed only video poker machines. Legislation enacted in 1987 extended state regulatory control to keno and bingo machines. This factor is reflected in the sharp increase in machine permits between fiscal year 1987 and 1988.

<sup>2</sup>The number of permits issued in fiscal year 1991 is current as of December 31, 1990. If the number of permits issued from January to June 1991 is consistent with the same period in fiscal year 1990, another 500 to 600 machine permits will be issued for fiscal year 1991.

**VIDEO GAMBLING MACHINE PERMITS**  
**Fiscal Years 1986 - 1991**





**Video Gambling Machine Permits Issued Per Premises.** Section 23-5-611, MCA, permits an operator to place up to 20 video gambling machines on his or her premises; no more than ten of the machines may be draw poker machines. The following table reflects the number of premises with a specific number of machines as of December, 1990.

<u>No. of Machines on Premise</u>	<u>No. of Premises</u>	<u>Total Machines</u>	<u>Percentages of: Premises    Machines</u>	
1	183	183		
2	204	408		
3	199	597		
4	213	852		
5	<u>171</u>	<u>855</u>		
<b>Totals</b>	<b>970</b>	<b>2,895</b>	<b>58.2%</b>	<b>27.8%</b>
6	144	864		
7	107	749		
8	73	584		
9	46	414		
10	<u>53</u>	<u>530</u>		
<b>Totals</b>	<b>423</b>	<b>3,141</b>	<b>25.4%</b>	<b>30.1%</b>
11	33	363		
12	32	384		
13	25	325		
14	19	266		
15	<u>25</u>	<u>375</u>		
<b>Totals</b>	<b>134</b>	<b>1,713</b>	<b>8.0%</b>	<b>16.4%</b>
16	16	256		
17	11	187		
18	12	216		
19	9	171		
20	<u>92</u>	<u>1,840</u>		
<b>Totals</b>	<b>140</b>	<b>2,670</b>	<b>8.4%</b>	<b>25.6%</b>

As indicated above, 58.2 percent of the premises operate from one to five machines, which represents 27.8 percent of the video gambling machines in play. In contrast, 8.4 percent of the premises offer from 15 to 20 machines, which represents 25.6 percent of the video gambling machines in play.

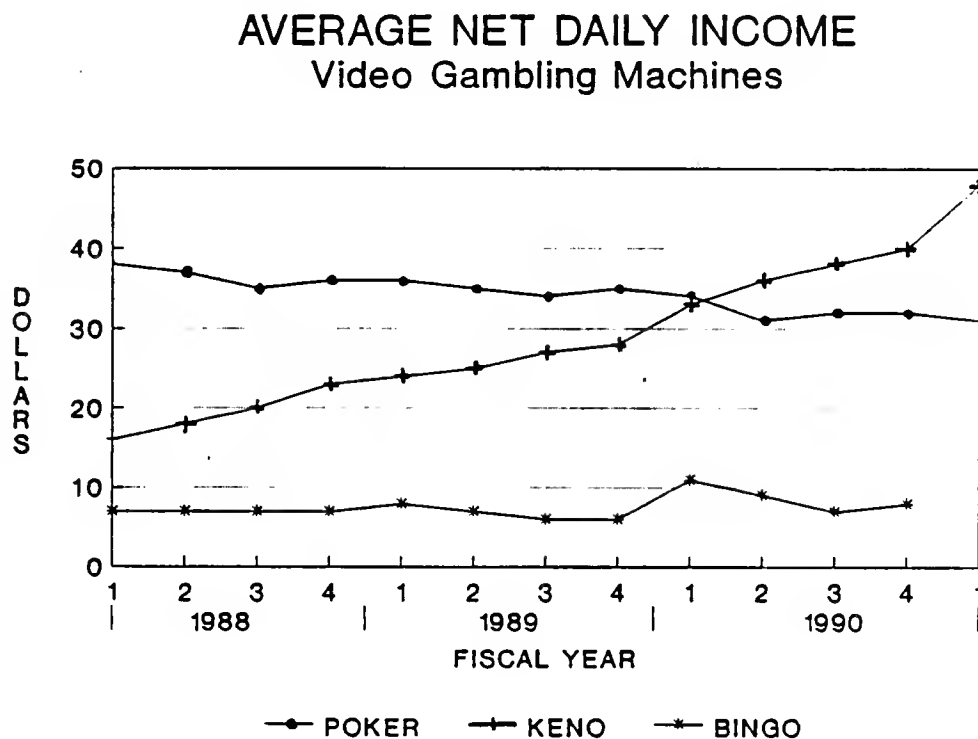
**Video Gambling Machine Permit Fees: Fiscal Years 1986 Through December 31, 1990.** The following table indicates the amount collected in video gambling machine permit fees from fiscal years 1986 through the second quarter of fiscal year 1991. For fiscal years 1986 and 1987, the fee was a proratable \$1500. In fiscal years 1988 and 1989, the fee was a nonproratable \$100. Since October 1, 1989, the fee has been a nonproratable \$200, one-half of which is distributed to local governments. The remainder is retained by the Department.

<u>Fiscal Year</u>	<u>Permit Fees Collected</u>
1986	\$2,100,000
1987	3,250,000
1988	846,000
1989	966,900
1990	2,231,883
1991	2,251,600

**Video Gambling Machine Daily Net Income: Fiscal Year 1988 Through December 31, 1990.** The Department monitors video gambling machine net income by tracking quarterly reported income and taxes paid. The average net daily income is the average daily amount of money put into the machines minus credits paid out in cash. This statistic is calculated by using reported income and the number of days each machine was operated during the quarter. The table on the following page summarizes the average daily income by machine type from fiscal year 1988 through the first quarter of fiscal year 1991.

on "grandfathered" keno machines, see Chapter IV.)

The following graph illustrates average net daily income by machine type from the first quarter of fiscal year 1988 through the first quarter of fiscal year 1991.



**Video Gambling Machine Annual Net Income: Fiscal Years 1989 and 1990.** Total video gambling machine annual net income (i.e., money put into the machines minus credits paid out in cash) for all machines reporting in fiscal year 1990 was \$113,360,000.<sup>3</sup> The average net income per machine was

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<sup>3</sup>Total annual net income is calculated by dividing the video gambling machine tax paid by the tax rate of 15 percent.

**AVERAGE NET DAILY INCOME BY MACHINE TYPE**  
**Fiscal Years 1989 - 1991**

<u>FY 88</u>					<u>FY 89</u>			
<u>Machine Type</u>	<u>Q1</u>	<u>Q2</u>	<u>Q3</u>	<u>Q4</u>	<u>Q1</u>	<u>Q2</u>	<u>Q3</u>	<u>Q4</u>
Poker	\$38	\$37	\$35	\$36	\$36	\$35	\$34	\$35
Keno	16	18	20	23	24	25	27	28
Bingo	7	7	7	7	8	7	6	6

<u>FY 90</u>					<u>FY 91</u>			
<u>Machine Type</u>	<u>Q1</u>	<u>Q2</u>	<u>Q3</u>	<u>Q4</u>	<u>Q1</u>	<u>Q2</u>	<u>Q3</u>	<u>Q4</u>
Poker	\$34	\$31	\$32	\$32	\$31			
Keno	33	36	38	40	48			
Bingo	11	9	7	8	NA <sup>1</sup>			

<sup>1</sup>Beginning in the first quarter of fiscal year 1991, there were no approved bingo machines. Bingo machines previously reporting income were phased out July 1, 1990.

While only the average net daily income for keno machines reflects a significant increase during the last 13 quarters, machine play for all machine types continued to rise because of the increase in the number of machines available for play. Average net daily income for poker machines decreased from \$38 in the first quarter of fiscal year 1988 to \$31 in the first quarter of fiscal year 1991. However, there were 6,690 poker machines in operation during the first quarter of fiscal year 1991, compared to 4,564 machines in fiscal year 1988, representing an overall increase in play.

Average net daily income for keno machines exceeded that of poker machines for the first time in the second quarter of fiscal year 1990. Speculation as to the reasons for the higher keno machine income range from a player preference for the higher maximum payout for keno machines (\$800 vs \$100 for poker machines) to the fact that "grandfathered" keno machines did not possess reliable and auditable metering until fiscal year 1990 and were eventually phased out. (For a discussion

\$10,261. Based on the reported machine net income, the Department estimates that the total amount wagered on the machines was \$251,800,000. This amount is calculated by using an estimated payback to players of approximately 55 percent.

The 55 percent payout to players is substantially lower than the statutorily required payback of at least 80 percent (23-5-607, MCA) and requires explanation. All machines approved for play in Montana meet the expected payback percentage of 80 percent. In fact, the probability of winning back the wagers made on most machine models ranges from 85 percent to 92 percent. When credits won are compared to credits played, the result is consistently above 80 percent. Credits won, however, are not the same as credits paid out. Player behavior is such that credits won are readily replayed, which eventually results in more opportunity for losing. The result, therefore, is not an 80 percent payout to players but closer to 55 percent.

The table on the following page presents data on the annual net income for those video gambling machines running for two or more quarters during fiscal years 1989 and 1990.

**VIDEO GAMBLING MACHINES ACCORDING TO  
ANNUAL NET INCOME PER MACHINE  
Fiscal Years 1989 and 1990**

<u>Annual Net Income</u>	<u>Number of Machines</u>	
	<u>FY 89</u>	<u>FY 90</u>
\$0 to \$ 1,000	196	48
\$1,000 to \$ 2,000	304	240
\$2,001 to \$ 3,000	407	312
\$3,001 to \$ 4,000	478	464
\$4,001 to \$ 5,000	<u>467</u>	<u>490</u>
<b>Totals</b>	<b>1,385</b>	<b>1,554</b>
\$5,001 to \$ 6,000	475	565
\$6,001 to \$ 7,000	491	545
\$7,001 to \$ 8,000	453	534
\$8,001 to \$ 9,000	424	412
\$9,001 to \$10,000	<u>343</u>	<u>391</u>
<b>Totals</b>	<b>2,186</b>	<b>2,447</b>
\$10,001 to \$15,000	1,294	1,410
\$15,001 to \$20,000	655	722
\$20,001 to \$25,000	377	381
\$25,001 to \$30,000	187	228
\$30,001 to \$35,000	120	147
\$35,001 to \$40,000	70	87
\$40,001 to \$45,000	53	57
\$45,001 to \$50,000	29	37
\$50,001 to \$55,000	30	25
\$55,001 to \$60,000	23	24
\$60,001 to \$65,000	14	17
\$65,001 to \$70,000	11	6
\$70,001 to \$75,000	7	18
\$75,001 to \$80,000	5	7
\$80,001 to \$85,000	2	7
\$85,001 to \$90,000	1	2
\$90,001 to \$100,000	0	6
\$100,000 plus	1	2

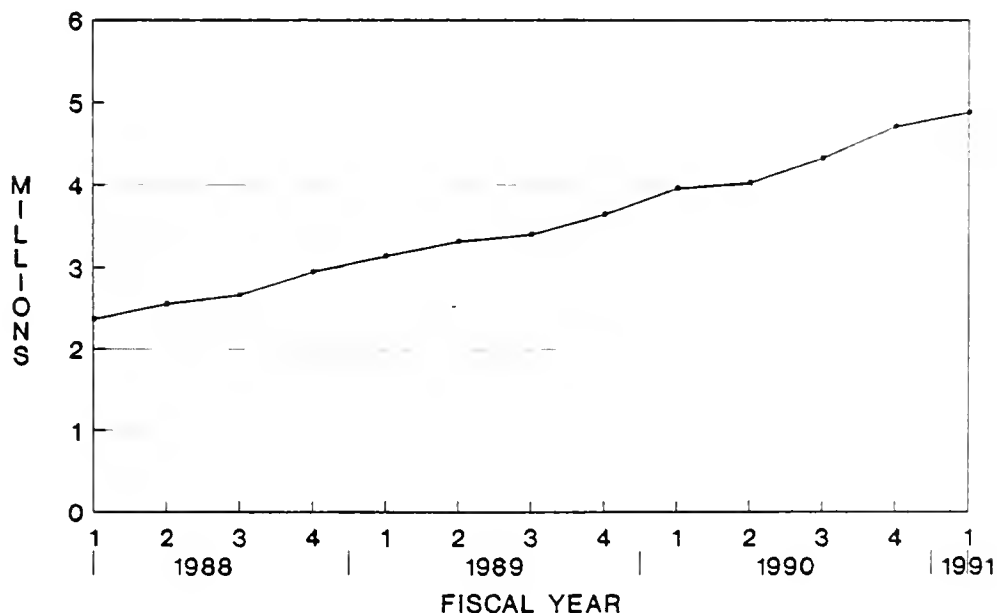
**Video Gambling Machine Net Income Tax: Fiscal Years 1988  
Through December 31, 1990.** As noted earlier, the tax on video gambling machines is 15 percent of net machine income.

The tax paid by quarter from fiscal year 1988 through the first quarter of fiscal year 1991 is provided in the following table. Video gambling machine tax revenues increased 28 percent from fiscal year 1988 to 1989; likewise, revenues grew by 26 percent from fiscal year 1989 to fiscal year 1990. A graph illustrating the growth pattern is also provided.

**VIDEO GAMBLING MACHINE NET INCOME TAX**  
**Fiscal Years 1988 - 1991**

<u>FY</u>	<u>Q1</u>	<u>Q2</u>	<u>Q3</u>	<u>Q4</u>	<u>Total</u>
1988	\$2,360,145	\$2,548,998	\$2,656,831	\$2,938,063	\$10,504,037
1989	3,136,329	3,309,638	3,401,053	3,644,534	13,491,554
1990	3,949,782	4,024,386	4,317,195	4,713,132	17,004,495
1991	4,919,102				

**NET MACHINE INCOME TAX**  
**Video Gambling Machines**



## C. LIVE CARD GAMES

**Live Card Table Permits: Fiscal Year 1990 Through December 31, 1991.** The fee for live card tables is \$250 for the first table operating in an establishment and \$500 for each additional table. The Department of Justice retains \$100 from each card table permit fee. The balance is distributed to the local government entities in which the tables are located. Unlike video gambling machines and live bingo and keno, no tax is imposed on the operation of card game tables.

The following tables indicate the number of live card game table permits issued and distribution of permit fees from the first quarter of fiscal year 1990 through the first quarter of fiscal year 1991.

FY 90 <u>Quarter</u>	Number of Table Permits Issued:		Permit <u>Fees</u>	Distribution to:	
	<u>@\$250</u>	<u>@\$500</u>		<u>Local Government</u>	<u>Gambling Control Admin. Account</u>
1st	190	51	\$73,000	\$48,900	\$24,100
2nd	18	1	5,000	3,100	1,900
3rd	18	6	7,500	5,100	2,400
4th	8	1	2,500	1,600	900
Totals	234	59	\$88,000	\$58,700	\$29,300

FY 91 <u>Quarter</u>	Number of Table Permits Issued:		Permit <u>Fees</u>	Distribution to:	
	<u>@\$250</u>	<u>@\$500</u>		<u>Local Government</u>	<u>Gambling Control Admin. Account</u>
1st	217	42	\$75,250	\$49,350	\$25,900

## D. LIVE KENO AND BINGO

**Live Keno and Bingo Permits: Fiscal Year 1990 Through December 31, 1990.** The fee for a live keno or bingo permit is \$500 per premises. The permit fee is retained by the Department for gambling regulation. Certain charitable



organizations qualified under 26 U.S.C. 501(c)(3) and (c)(4) for a federal tax exemption are exempt from the \$500 permit fee. An organization qualified for the federal exemption on January 15, 1989, is exempt from all of the permit fee. An organization qualified for the federal exemption after that date is exempt from one-half of the fee. The tables on the following page list the number of bingo and keno permits issued and fees collected for fiscal year 1990 and the first two quarters of fiscal year 1991.

**LIVE BINGO AND KENO PERMITS**  
**Fiscal Years 1990 and 1991**

**Fiscal Year 1990**

<u>Game Type</u>	<u>Permits Issued</u>	<u>Permit Fees</u>
Bingo	54	\$27,000
Keno	52	26,000
Keno/Bingo	11	5,500
Exempt Organizations:		
Keno	3	0
Bingo	60	0
	<hr/>	<hr/>
<b>Totals</b>	<b>180</b>	<b>\$58,500</b>

**Fiscal Year 1991**

<u>Game Type</u>	<u>Permits Issued</u>	<u>Permit Fees</u>
Bingo	58	\$23,500
Keno	47	29,000
Keno/Bingo	10	5,000
Exempt Organizations:		
Keno	2	0
Bingo	62	0
Keno/Bingo	1	0
	<hr/>	<hr/>
<b>Totals</b>	<b>180</b>	<b>\$57,500</b>

**Live Keno and Bingo Tax: Fiscal Year 1990.** In addition to the permit fee, bingo and keno operators are subject to an income tax on the games. The tax is the greater of one percent of the gross proceeds from the game (i.e., gross revenue received minus prizes paid out) or five percent of the net game income (i.e., gross proceeds minus allowable expenses). The tax is distributed to local government entities. The following table reports revenue collected for the period October 1, 1989 through June 30, 1990 from the live bingo and keno income tax.

**LIVE BINGO/KENO TAX: FISCAL YEAR 1990**

<u>Type of Game</u>	<u>Number of Returns</u>	<u>Gross Proceeds<sup>1</sup> Reported</u>	<u>Tax:</u>	
			<u>@1%</u>	<u>@5%</u>
Bingo	54	\$1.31 mil	\$13,113	\$4,020
Keno	52	1.45 mil	\$14,098	\$3,258
Nonfilers <sup>2</sup>	11			
<b>Totals</b>	<b>117</b>	<b>\$2.76 mil</b>	<b>\$27,211</b>	<b>\$7,278</b>

<sup>1</sup>Gross proceeds means gross revenue received to play the games minus prizes paid out.

<sup>2</sup>The Department is working with nonfilers to bring them into compliance.

**E. OTHER GAMES**

Three gambling activities authorized by law require neither a state permit fee nor payment of a tax. As a result, statistical data on these games is limited.

**Raffles.** Before conducting a raffle, a person must obtain a permit from the board of county commissioners in the county where the raffle is to be held. Because permits are issued by

the counties, there is no centralized source of information indicating the number or dollar value of raffles conducted in fiscal year 1990.

**Calcutta Pools.** A Calcutta pool is a form of auction pool conducted in conjunction with an event involving more than two competitors. Participants in the pool bid on the event's competitors, and a person's wager is equal to his or her bid. Proceeds from the pool, minus administrative costs and prizes paid, must be contributed to a charitable or nonprofit cause. Calcutta pools must be authorized by the Department. In fiscal year 1990, the Department authorized 14 Calcuttas.

**Sports Pools.** A sports pool is a gambling activity based on a sports event that is conducted on a card divided into spaces or squares arranged in columns and horizontal rows. Each space or square, which may not be sold for more than \$5, represents a chance to win. After all squares or spaces are sold and before the start of the sports event, numbers are randomly assigned to the rows and columns providing a two-number designation for each square or space. The winner is the purchaser of the square or space whose numbers correspond to the last digit of each team's score. The total amount paid to winners may not exceed \$500. Because no authorization is required before conducting a sports pool, information on the number or dollar value of sports pool wagers is unavailable.

## F. AMOUNTS WAGERED IN SELECTED GAMBLING ACTIVITIES

Statistics on the amounts wagered on legal gambling activities in this state are available for horse racing, commercial live bingo and keno games<sup>4</sup>, the lottery, and video gambling machines<sup>5</sup>. In fiscal year 1990, Montanans and visitors to this state wagered \$292.9 million on these activities. This amounts to an average of \$498 for every Montana resident age 18 or older. The amount wagered by activity is as follows:

Horse Racing	\$ 6,200,000
Commercial Live Keno	5,410,000
Commercial Live Bingo	8,040,000
Lottery	21,500,000
Video Gambling Machines	251,800,000
<hr/>	
<b>Total</b>	<b>\$292,950,000</b>

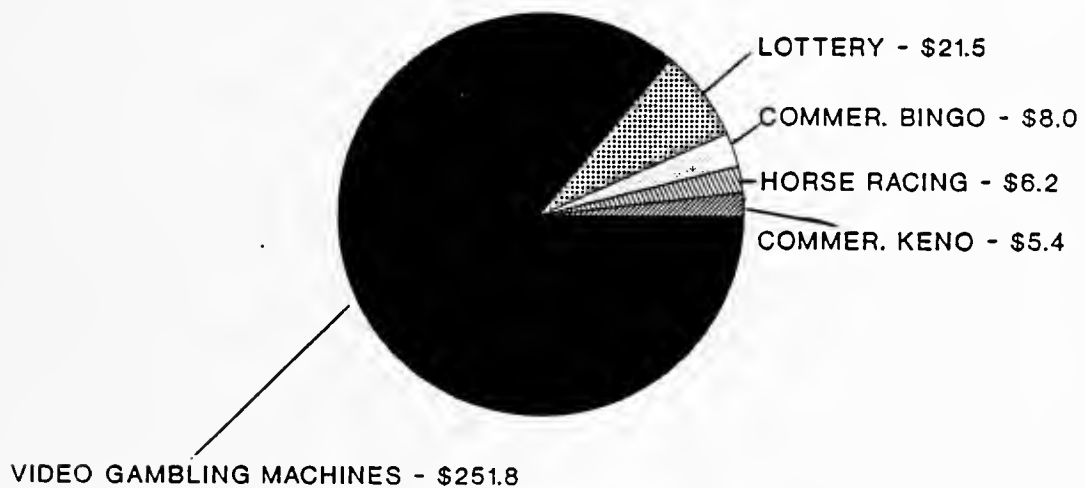
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<sup>4</sup> No data is available on the amount wagered for bingo and keno games conducted by nonprofit charitable organizations because these organizations are exempt from the bingo and keno tax.

<sup>5</sup> The amount wagered on video gambling machines is an estimate based on a sample of video gambling machine tax returns.

As illustrated in the graph below, video gambling machines account for 86 percent of the wagering on these five gambling activities, while horse racing accounts for two percent.

AMOUNTS WAGERED: SELECTED ACTIVITIES  
Fiscal Year 1990



IN MILLIONS



## II. DISTRIBUTION OF GAMBLING REVENUES

By statute, gambling revenues must be distributed to the state general fund, local government general funds, and a special revenue fund for the administration of gambling regulation. The following table details the amounts of revenue received for fiscal year 1990 and indicates to which funds the revenue was distributed.

<u>Revenue Distributed to:</u>				
<u>Revenue Source</u>	<u>Total Received</u>	<u>State General Fund</u>	<u>Local Government General Funds</u>	<u>Special Revenue Fund</u>
Machine Permit Fees*	\$ 2,231,883	0	\$ 1,104,800	\$1,127,083
Machine Tax*	17,004,495	\$5,668,165	11,336,330	0
Card Table Permit Fees	88,000	0	58,700	29,300
Dealer Lic. Fees	43,165	0	0	43,165
Live Keno/Bingo Permit Fees	59,500	0	0	59,500
Live Keno/Bingo Tax	34,489	0	34,489	0
Manufacture/Dist. Lic. Fee.	189,355	0	0	189,355
<b>Totals</b>	<b>\$19,650,887</b>	<b>\$5,668,165</b>	<b>\$12,534,319</b>	<b>\$1,448,403</b>

\*Machine permit fees and machine tax refer to video gambling machines

To demonstrate the impact gambling revenue has had on local government operating budgets, the following table provides a list of cities and counties that receive gambling revenue, an estimate of their general fund revenues, the amount of gambling revenue distributed in fiscal year 1990, and the percentage gambling revenue bears to total general fund

revenue. Local government general fund information was obtained from documents on file with the Local Government Services Division of the Department of Commerce.

NOTE: Because machine taxes are paid after the end of a quarter, fourth quarter taxes are distributed in the first quarter of the next year. Thus, the fourth quarter 1989 collections were distributed in fiscal year 1990 and fourth quarter 1990 collections were distributed in fiscal year 1991. The amounts shown below as distributed may therefore vary from statistics reported in the previous table.

#### DISTRIBUTION OF GAMBLING REVENUES TO LOCAL GOVERNMENT ENTITIES

County Cities	Total Gen Fund	Machine Tax	Machine License	Card Table Fees	Total Gam Rev.	% of Total
01 Butte						
Silver Bow	\$ 7,370,082	\$ 625,145	\$ 66,600	\$2,700	\$ 694,445	9.4%
Walkerville	63,989	2,956	700	0	3,656	5.7%
02 Cascade	\$ 6,263,459	\$ 280,261	\$ 27,100	\$ 450	\$ 307,811	4.9%
Belt	115,762	14,462	1,600	0	16,062	13.9%
Cascade	99,232	9,018	1,600	0	10,618	10.7%
Gt. Falls	13,805,425	982,595	89,300	5,700	1,077,595	7.8%
Neihart	16,894	588	100	0	688	4.1%
03 Yellowst.	\$11,527,562	\$ 157,192	\$ 13,000	\$ 700	\$ 170,892	1.5%
Laurel	1,642,335	133,637	10,600	850	145,087	8.8%
Broadview	*	2,917	600	0	3,517	*
Billings	17,555,330	1,906,414	133,500	8,050	2,047,964	11.7%
04 Missoula	\$ 8,029,175	\$ 244,225	\$ 27,800	\$ 150	\$ 272,175	3.4%
Missoula	12,873,220	811,838	60,600	4,300	876,738	6.8%
05 Lewis&Cl	\$ 3,694,368	\$ 99,386	\$ 13,900	\$ 450	\$ 113,736	3.1%
E. Helena	398,590	37,992	2,800	0	40,792	10.2%
Helena	5,511,781	478,550	38,900	1,600	519,050	9.4%
06 Gallatin	\$ 3,353,942	\$ 76,782	\$ 8,400	\$ 0	\$ 85,182	2.5%
Belgrade	521,686	57,202	5,000	550	62,752	12.0%
Bozeman	2,464,549	261,294	24,000	1,700	286,994	11.6%
Manhattan	145,585	13,344	1,400	0	14,744	10.1%
Three Forks	186,054	19,028	1,800	150	20,978	11.3%
W. Yellowst	880,695	39,318	4,300	150	43,768	4.9%



07 Flathead	\$ 5,309,684	\$ 232,574	\$ 26,200	\$1,500	\$ 260,274	4.9%
Col. Falls	485,433	78,139	6,300	300	84,739	17.5%
Kalispell	2,371,043	362,224	27,100	5,100	394,424	16.6%
Whitefish	1,025,291	107,792	10,900	1,700	120,392	11.7%
08 Fergus	\$ 1,427,894	\$ 18,856	\$ 3,100	\$ 150	\$ 22,106	1.5%
Denton	44,695	1,544	100	150	1,794	4.0%
Grass Range	24,505	2,324	200	0	2,524	10.3%
Lewistown	1,194,303	88,509	11,800	850	101,159	8.5%
Winifred	*	1,996	200	0	2,196	*
Moore	22,061	2,155	400	0	2,555	11.5%
09 Petroleum	\$ NA	\$ 0	\$ 0	\$ 0	\$ 0	NA
Winnett	68,524	2,230	400	0	2,630	3.8%
10 Carbon	\$ 1,393,589	\$ 21,241	\$ 3,700	\$ 0	\$ 24,941	1.8%
Bearcreek	33,825	895	200	0	1,095	3.2%
Bridger	116,023	14,081	2,000	0	16,081	13.8%
Fromberg	72,922	8,410	900	0	9,310	12.8%
Joliet	66,307	7,380	1,100	0	8,480	12.8%
Red Lodge	696,019	38,955	7,800	150	46,905	6.7%
11 Phillips	\$ 1,384,382	\$ 15,341	\$ 2,000	\$ 300	\$ 17,641	1.3%
Dodson	18,171	1,695	400	150	2,245	12.3%
Malta	545,327	34,049	4,300	600	38,949	7.1%
Saco	46,993	3,346	400	300	4,046	8.6%
12 Hill	\$ 1,942,771	\$ 50,319	\$ 6,100	\$ 300	\$ 56,719	2.9%
Havre	1,998,380	180,585	18,800	1,400	200,785	10.0%
13 Ravalli	\$ 2,230,463	\$ 55,629	\$ 8,700	\$ 300	\$ 64,629	2.9%
Darby	*	8,845	1,000	300	10,145	*
Hamilton	607,675	105,833	9,000	300	115,133	18.9%
Stevensvil	179,690	15,711	2,800	150	18,661	10.3%
14 Custer	\$ 1,255,101	\$ 12,898	\$ 2,000	\$ 150	\$ 15,048	1.2%
Miles City	2,024,734	153,026	12,100	1,450	166,576	8.2%
15 Lake	\$ 1,743,436	\$ 40,045	\$ 7,000	\$ 150	\$ 47,195	2.7%
Polson	665,062	66,643	9,300	300	76,243	11.5%
Ronan	350,002	32,971	4,500	0	37,471	10.7%
St. Ignat.	96,759	1,533	400	0	1,933	2.0%
16 Dawson	\$ 1,522,847	\$ 13,693	\$ 1,100	\$ 0	\$ 14,793	1.0%
Glendive	1,592,139	160,310	13,000	750	174,060	10.9%
Richey	41,610	501	100	0	601	1.4%

17 Roosevelt	\$ 2,452,864	\$ 11,670	\$ 1,700	\$ 150	\$ 13,520	.5%
Bainville	*	10,266	1,300	0	11,566	*
Brockton	8,365	1,003	300	0	1,303	15.5%
Culbertson	164,014	13,712	900	0	14,612	8.9%
Froid	43,545	4,714	1,100	0	5,814	13.3%
Poplar	175,443	24,565	2,800	0	27,365	15.6%
Wolf Point	772,737	26,943	3,700	150	30,793	4.0%
18 Beaverhead	\$1,133,793	\$ 9,438	\$ 1,900	\$ 450	\$ 11,788	1.0%
Dillon	566,508	67,931	7,300	300	75,531	13.3%
Lima	42,173	5,129	600	0	5,729	13.6%
19 Chouteau	\$ 1,140,740	\$ 13,320	\$ 2,300	\$ 0	\$ 15,620	1.4%
Big Sandy	*	22,684	1,700	150	24,534	*
Fort Benton	304,587	14,839	2,300	0	17,139	5.6%
Geraldine	37,613	1,641	500	0	2,141	5.7%
20 Valley	\$ 1,786,538	\$ 32,519	\$ 4,200	\$ 150	\$ 36,869	2.1%
Glasgow	1,112,717	39,060	5,100	600	44,760	4.0%
Nashua	64,949	3,791	500	0	4,291	6.6%
Opheim	39,589	3,450	300	0	3,750	9.5%
Fort Peck	490,665	1,032	300	0	1,332	.27%
21 Toole	\$ 1,536,983	\$ 28,788	\$ 4,900	\$ 150	\$ 33,838	2.2%
Kevin	84,462	5,479	600	0	6,079	7.2%
Shelby	844,017	66,171	6,700	300	73,171	8.7%
Sunburst	89,804	6,759	800	0	7,559	8.4%
22 Big Horn	\$ 3,967,855	\$ 2,084	\$ 500	\$ 0	\$ 2,584	.06%
Hardin	588,113	83,911	8,700	0	92,611	15.7%
23 Musselsh.	\$ 1,109,079	\$ 4,274	\$ 600	\$ 0	\$ 4,874	.43%
Melstone	67,773	1,357	100	0	1,457	2.1%
Roundup	202,599	25,022	3,000	300	28,322	13.9%
24 Blaine	\$ 1,168,117	\$ 6,606	\$ 1,200	\$ 0	\$ 7,806	.66%
Chinook	379,262	27,199	3,500	0	30,699	8.1%
Harlem	317,140	9,391	1,500	0	10,891	3.4%
25 Madison	\$ 1,222,764	\$ 24,961	\$ 6,200	\$ 600	\$ 31,761	2.6%
Ennis	155,682	18,904	2,400	300	21,604	13.9%
Sheridan	107,700	5,582	1,700	0	7,282	6.8%
Twin Bridg.	93,395	5,050	600	0	5,650	6.0%
Virg. City	49,267	5,128	500	0	5,628	11.4%
26 Pondera	\$ 901,487	\$ 20,446	\$ 2,500	\$ 0	\$ 22,946	2.5%
Conrad	707,091	25,967	2,900	150	29,017	4.1%
Valier	114,108	5,006	800	0	5,806	5.1%
27 Richland	\$ 1,634,919	\$ 12,262	\$ 1,400	\$ 0	\$ 13,662	.83%
Fairview	120,724	13,251	700	0	13,951	11.5%
Sidney	1,128,960	128,619	11,300	300	140,219	12.4%

28 Powell	\$ 1,123,237	\$ 14,636	\$ 2,900	\$ 0	\$ 17,536	1.6%
Deer Lodge	623,000	58,832	7,900	300	67,032	10.8%
29 Rosebud	\$ 3,297,469	\$ 48,427	\$ 4,300	\$ 150	\$ 52,877	1.6%
Forsyth	489,580	37,720	4,300	150	42,170	8.6%
30 Ana-DrLdg	\$ 2,673,693	\$ 211,036	\$ 22,000	\$ 600	\$ 233,636	8.7%
31 Teton	\$ 982,019	\$ 2,945	\$ 500	\$ 150	\$ 3,595	.36%
Choteau	298,942	27,086	3,300	0	30,386	10.2%
Dutton	62,631	7,340	800	150	8,290	13.2%
Fairfield	147,753	14,959	1,300	150	16,409	11.1%
32 Stillwater	\$ 1,602,000	\$ 32,584	\$ 3,300	\$ 0	\$ 35,884	2.2%
Columbus	394,906	24,062	3,700	0	27,762	7.0%
33 Treasure	\$ 353,158	\$ Negligible	\$	NA		
Hysham	52,579	4,772	800	0	\$ 5,572	10.6%
34 Sheridan	\$ 1,487,858	\$ 6,920	\$ 1,500	\$ 0	\$ 8,420	.56%
Medicine L	61,332	3,183	800	0	3,983	6.5%
Outlook	18,057	184	200	0	384	2.1%
Plentywood	402,927	28,676	4,900	450	34,026	8.4%
Westby	49,829	5,352	1,300	0	6,652	13.3%
35 Sanders	\$ 1,256,064	\$ 23,811	\$ 5,200	\$ 0	\$ 29,011	2.3%
Hot Springs	68,386	8,197	800	0	8,997	13.2%
Plains	228,481	19,313	3,100	0	22,413	9.8%
T Falls	265,091	25,284	2,700	300	28,284	10.7%
36 Judith Bas	\$ 439,631	\$ 4,792	\$ 1,000	\$ 150	\$ 5,942	1.3%
Hobson	\$ *	4,317	500	0	4,817	*
Stanford	65,091	4,456	800	150	5,406	8.3%
37 Daniels	\$ 343,069	\$ 2,528	\$ 800	\$ 0	\$ 3,328	.97%
Flaxville	*	4,929	800	0	5,729	*
Scobey	203,600	25,046	3,200	550	28,796	14.1%
38 Glacier	\$ 1,236,062	\$ 1,259	\$ 300	\$ 0	\$ 1,559	.12%
Browning	102,949	1,294	NA	0	1,294	1.3%
Cut Bank	671,828	57,973	5,700	0	63,673	9.5%
39 Fallon	\$ 2,307,293	\$ 379	\$ 100	\$ 0	\$ 479	.02%
Baker	679,653	23,983	3,200	450	27,633	4.0%
Plevna	*	801	100	0	901	*
40 Sweet Grass	\$ 624,623	\$ 4,658	\$ 1,300	\$ 0	\$ 5,958	.95%
Big Timber	418,003	19,488	3,300	0	22,788	5.4%
41 McCone	\$ 597,909	\$ 1,785	\$ 200	\$ 0	\$ 1,985	.33%
Circle	188,387	10,761	1,900	0	12,661	6.7%

42 Carter	\$	363,665	\$	959	\$	200	\$	150	\$	1,309	.36%
Ekalaka		56,721		6,506		600		0		7,106	12.5%
43 Broadwater	\$	869,624	\$	19,445	\$	2,800	\$	0	\$	22,245	2.6%
Townsend		216,421		29,070		2,900		150		32,120	14.8%
44 Wheatland	\$	525,223	\$	4,423	\$	700	\$	0	\$	5,123	.97%
Harlowton		179,157		14,347		2,100		0		16,447	9.8%
Judith Gap		*		2,606		600		0		3,206	*
45 Prairie	\$	376,043	\$	1,126	\$	400	\$	0	\$	1,526	.40%
Terry		175,455		9,163		1,500		0		10,663	6.1%
46 Granite	\$	516,317	\$	10,666	\$	2,000	\$	150	\$	12,816	2.5%
Drummond		62,631		10,621		1,100		0		11,721	18.7%
Philipsburg		156,549		17,907		2,200		300		20,407	13.0%
47 Meagher	\$	441,112	\$	5,454	\$	1,100	\$	0	\$	6,554	1.5%
W-S Springs		98,149		21,203		2,600		0		23,803	24.2%
48 Liberty	\$	494,812	\$	2,288	\$	500	\$	0	\$	2,788	.56%
Chester		158,685		12,898		2,300		150		15,348	9.7%
49 Park	\$	1,311,036	\$	43,443	\$	5,400	\$	300	\$	49,143	3.7%
Clyde Park		12,995		8,859		900		0		9,759	75.1%
Livingston		1,963,076		123,097		13,000		850		136,947	7.0%
50 Garfield	\$	444,160	\$	534	\$	100	\$	0	\$	634	.14%
Jordan		149,538		8,844		900		150		9,894	6.6%
51 Jefferson	\$	1,648,232	\$	41,928	\$	4,900	\$	0	\$	46,828	2.8%
Boulder		167,599		13,788		2,500		0		16,288	9.7%
Whitehall		179,400		20,426		4,500		0		24,926	13.9%
52 Wibaux	\$	723,822	\$	757	\$	300	\$	0	\$	1,057	.15%
Wibaux		111,159		12,707		2,100		0		14,807	13.3%
53 Golden Val	\$	285,937	\$	731	\$	300	\$	0	\$	1,031	.36%
Ryegate		69,782		7,166		800		0		7,966	11.4%
Lavina		29,065		287		100		0		387	1.3%
54 Mineral	\$	753,403	\$	53,427	\$	4,900	\$	0	\$	58,327	7.7%
Alborton		38,130		2,493		500		0		2,993	7.8%
Superior		158,206		23,224		3,500		0		26,724	16.9%
55 Powder River	\$	NA	\$	0	\$	0	\$	0	\$	0	NA
Broadus		145,758		9,412		1,200		300		10,912	7.5%

56 Lincoln	\$ 1,830,347	\$ 147,816	\$ 10,100	\$1,800	\$ 159,716	8.7%
Eureka	122,546	19,289	3,900	300	23,489	19.2%
Libby	684,877	69,765	6,800	150	76,715	11.2%
Rexford	*	1,720	400	0	2,120	*
Troy	*	32,889	3,400	300	36,589	*

\*Local general fund information not available at this time.

**Analysis of Local Government General Fund Information**  
**(For entities for which budget information was obtained)**

Percentage of Total General Fund Attributable to Gambling Revenue:

Total Distributions	\$ 11,610,495	= 5.9%
Total City/County General Funds	\$195,029,080	

Percentage of Total City General Fund Attributable to Gambling Revenue:

Total City Distributions	\$ 8,478,333	= 9.4%
Total City General Funds	\$ 89,970,526	

Percentage of Total County General Fund Attributable to Gambling Revenue:

Total County Distributions	\$ 3,132,170	= 3.0%
Total County General Funds	\$105,058,554	

As indicated above, gambling revenue comprises a larger share of city general fund revenue (9.4 percent) than county general fund revenue (3.0 percent). With some exceptions, any decision made with respect to these revenues will have a larger impact on city governments than county governments..



### III. DIVISION ACTIVITIES

Fiscal year 1990 was the first year of operation for the Gambling Control Division of the Department of Justice. Many of the regulatory duties assigned to the Division were never before handled by a state agency. Before October 1989, regulation of most gambling activities had been the responsibility of local governments.

Before officially assuming jurisdiction over gambling activities on October 1, 1989, the Division's Investigation Bureau surveyed licensed premises in twenty counties. The Bureau found that illegal gambling activities were being conducted in 133 licensed premises. The illegal gambling activities commonly found were:

- |                          |                          |
|--------------------------|--------------------------|
| -- Dice games            | -- Pots on card games    |
| -- Pull tabs/punchboards | exceeding legal limits   |
| -- Drawings              | -- Credit gambling       |
| -- Banking card games    | -- Other illegal devices |

In addition to the personal contact made at many of these premises, a press release was issued to reiterate that these games were illegal. Of the 133 premises conducting the games, 75 voluntarily terminated the activities. Eighteen premises terminated the activities only after receiving a warning from the Division's law enforcement personnel. Criminal or civil charges were filed or investigations initiated on 28 of the premises that, despite efforts to gain voluntary compliance, continued to operate the illegal games. Investigations are continuing relative to 12 premises.

To handle its assigned tasks regarding legal and illegal gambling activities, the Gambling Control Division was organized into four basic units: Administration, License and Tax, Investigation, and Audit. The Division developed new license and permit applications, drafted and adopted administrative rules, and began the process of overseeing the state's gambling activities. This process included conducting personal history background investigations on license applicants, examining financial statements, performing financial and tax audits, assessing and collecting taxes, issuing licenses and permits, conducting regulatory inspections and investigations of illegal activities, and representing the Division at administrative hearings. These regulatory functions and related activities are discussed below.

#### **A. ADMINISTRATION**

The four-member administrative unit oversaw the development of the Division throughout the year.

The unit worked closely with the Gaming Advisory Council, a nine-member policy group established by law to study all aspects of gambling in Montana. Staff prepared for and participated in nine Gaming Advisory Council meetings, reporting on Division activities and proposed administrative rules and legislation. In addition, the administrative officer served as staff to the Council.

The administrative unit also oversaw adoption of administrative rules covering gambling licenses and application processes, card games, keno games, video gambling machines, live keno and bingo recordkeeping, raffles, sports pools and Calcutta pools. Before adoption, the rules were properly noticed and public hearings were conducted.



With respect to litigation, the Department was involved in a number of cases in the justice and district courts since October 1, 1989. In each case, the Division's position has prevailed. Issues subject to litigation included the card game pot limit; banking card games; crane games; unauthorized video gambling machines; placement of video gambling machines within a premises; and exceeding the limit of 20 video gambling machines per premises.

The Division was also involved in numerous administrative proceedings that mostly involved licensing decisions.

In addition, state-tribal gaming compact negotiations consumed a portion of the administrative unit's time. The unit participated in meetings with each tribe with a reservation within the exterior boundaries of the state in an effort to formalize gambling compacts. (For a more complete discussion of the compact negotiations, see "Federal Indian Gaming Regulatory Act" in Chapter IV of this report.)

## **B. LICENSE AND TAX**

During fiscal year 1990, the License and Tax Bureau, consisting of ten employees, was responsible for processing all license applications and tax reports; issuing licenses and permits; collecting gambling taxes and fees and distributing these revenues to local governments; managing the Division computer system; and testing video gambling machines and machine modifications for approval. The Bureau's activities during the year are illustrated by the statistics provided on the following page.

License-related Documents Processed	12,800
Tax-related Documents Processed	42,200
Permits Issued	12,800
Tax & Fee Distributions to Local Govt.	766
Tax Collected (in millions)	\$17.13
Fees Collected (in millions)	\$ 2.31

#### Video Gambling Machines

New Models Processed	8
Modifications Processed	181

By employing temporary personnel, receiving assistance from other program staff, and working overtime, the License and Tax Bureau was able to keep current with processing license and tax documents in fiscal year 1990. However, with the projected growth in the gambling industry, additional personnel will be needed.

In fiscal year 1990, the workload of the Bureau's machine testing/computer system administration section was greater than anticipated both in terms of computer support and the number of machines and machine modifications submitted for approval. As a result, the length of time for obtaining approval for new machines and machine modifications was prolonged. Additional personnel will be necessary to evaluate the increasing number of machines submitted.

### C. INVESTIGATIONS

During fiscal year 1990, the Investigation Bureau was responsible for investigating civil and criminal matters related to gambling activities in this state. The Bureau consists of three employees located in Helena and ten

investigators located in six regions of the state. The following statistics reflect 12 months of activity (i.e., September 1, 1989 - November 30, 1990):

**Civil Actions:**

Warnings Issued	240
Violations Issued	33
License Investigations Referred to Unit	1,925
License Investigations Completed	190
Background Investigations Initiated	4,981
Background Investigations Completed	1,517
Premises Inspections	194
Machine Inspections	802

**Criminal and Administrative Actions:**

Investigations Initiated	735
Investigations Completed	599
Cases Referred for Criminal Prosecution	23

Among the criminal cases investigated by the Bureau, 21 cases involved tampering complaints, 27 involved theft, and three involved threats or intimidation. Assistance was provided in one gambling-related murder investigation.

The statistics provided above reflect staffing levels below that which is necessary for the effective regulation of gambling in Montana. In most performance areas, the Investigation Bureau was forced to adjust its priorities to meet the demands of the moment. The impact of understaffing

is especially apparent in the investigation of license applicants, inspections, and criminal investigations. In addition to the above activities, the Bureau obtained and served 12 search warrants. Items seized during authorized searches were valued in excess of \$369,000. The following is a partial list of seized items:

- 30 slot machines
- 89 illegal video gambling machines
  - 67 coin hoppers
  - 103 cabinets
- 302 pull tab boards
- 4 Blackjack tables
- 56 punchboards
- 42 illegal sports pool boards

The Bureau also received 101 requests for gambling game evaluations. Thirty-six of the games were approved, 13 proposals were modified before approval was granted, 44 were denied, and eight proposals are still pending.

The Bureau inspected 25 of the 34 carnival shows operating in Montana during fiscal year 1990. Bureau personnel issued two temporary cease and desist orders and two administrative violation notices for the possession of illegal gambling devices and operation of prohibited gambling schemes. Staff also issued 27 correction notices. (For a more complete discussion of this topic, see "Carnival and Amusement Games" in Chapter IV.)

#### D. AUDIT

The Audit Program, consisting of a Program Manager and two Revenue Agents, was responsible for all gambling-related tax audits, financial background reviews, and support for the Investigation Bureau in interpreting and analyzing documents seized from suspected illegal gambling activities. Program statistics relating to these activities are as follows:

##### Civil:

Office Tax Audits Conducted	900
Field Tax Audits Conducted	54
Financial Background Reviews Conducted	1,700
Reviews Designated for Follow-up	130
Follow-ups Initiated	0

##### Criminal:

Case Reports Filed	15
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In regard to tax audits, most staff time was spent on office-based audits, resulting in the assessment of \$112,805 in additional taxes and \$21,045 in late payment penalties. However, office audits took time away from field work, which is essential for maintaining the integrity of the taxes paid. Despite the limited number of field audits completed, the Program assessed \$61,512 in additional taxes and \$52,520 in late payment penalties.

The Audit Program also experienced increased requests for program time from the Investigation Bureau regarding criminal

matters. Each request for assistance took priority because the results of the analysis often determined whether felony or misdemeanor charges would be filed.

Because of the demands for office and field audits and criminal investigation assistance, the Audit Program was unable to complete financial background follow-up reviews in fiscal year 1990.

**Conclusion.** The reported statistics indicate that the gambling industry in Montana continues to grow under current law. To keep abreast of the current level of gambling and meet the challenges of expanded gambling, the Department will be requesting increased staff and recommending changes to provide for more efficient regulation of gambling.

#### **IV. GAMBLING ISSUES**

The Gambling Control Division encountered a number of issues in fiscal year 1990 in the form of games or practices that were permitted prior to the Department assuming regulatory control over gambling. The Division's position on these issues was based on the strict interpretation requirement in 23-5-111 of the Montana Code Annotated (MCA) coupled with knowledge of the legislative action on Senate Bill No. 431 (SB 431) during the 1989 session. Other issues requiring Department action arose because of industry initiatives and federal government action. The issues are discussed below.

##### **A. JACKS OR BETTER**

One of the first issues addressed by the Division involved the legality of the card game known as Jacks or Better. The Division contended that legalization of the game was explicitly rejected by the 1989 Legislature and that the game was prohibited. Proponents of the game challenged the Division's position in district court in the Eleventh Judicial District (Flathead County). The court ruled that Jacks or Better and similar card games in which the player vies against the house (i.e., the operator of the game) violate 23-5-311, MCA, which lists the live card games authorized in the state (Cause No. DV-89-640A).

##### **B. CRANE GAMES**

A crane game is a coin-operated device by which a player pays consideration and attempts to retrieve a prize by maneuvering a mechanical or electromechanical claw or other lifting device. An October 1989 Attorney General's opinion (43 Op. Att'y Gen. No. 39) held that crane games were gambling devices. The opinion further provided that because crane

games were not clearly authorized by law, their use was prohibited. Enforcement of the crane game opinion was challenged in district court in the Eleventh Judicial District in the same proceeding as the Jacks or Better issue. The court found in favor of the Division, ruling that the operation of crane games in which a gain may result to a player is a form of gambling not authorized by law.

#### **C. GRANDFATHERED KENO MACHINES**

In 1987, the Legislature provided for state control over video keno machines and adopted specifications requiring the machines to have metering devices and other recordkeeping features. However, the Legislature permitted certain machines that did not meet these specifications to operate until June 30, 1989. The 1989 Legislature later extended the use of these "grandfathered" keno machines through June 30, 1990. Many questions arose toward the end of the fiscal year regarding possession and modification of the machines.

The Department's position on this matter was that after June 30, 1990, the grandfathered keno machines would be considered illegal gambling devices that could not be possessed or operated in the state. The Division also asserted that because the machines were originally manufactured as gambling devices, they could not be modified and then operated as amusement devices.

#### **D. CARD GAME TOURNAMENTS**

Shortly after SB 431 became effective, the Division began addressing tournaments involving card games such as bridge and whist. Because the tournaments involved games of chance in which consideration was paid to participate and prizes were awarded to winners, the tournaments met the definition of



gambling and were subject to Division regulation. However, the law did not specifically provide direction for regulation of this activity.

The Division believed that it was not the Legislature's intent to require that each card game table used in a tournament obtain a permit at the rate prescribed by statute (i.e., \$250 for the first table and \$500 for each additional table). The Division also found it unreasonable to demand that each card game be conducted in the presence and under the control of a licensed dealer (23-5-309, MCA) since most tournaments required players to deal their own games and the house or tournament organizer did not take a pot rake.

To address the tournament issue, the Division adopted an administrative rule (ARM 23.16.110). The rule provided that a licensed operator with a permit to operate one or more card game tables may obtain a tournament permit upon submitting an application and \$10 processing fee at least ten days in advance of the event. In addition, a licensed card dealer must be present on the premises to oversee the games and settle disputes.

#### **E. FANTASY SPORTS LEAGUES**

A fantasy sports league is an activity in which participants by bidding or other means, select players from professional sporting ranks to form a fictitious or fantasy team. Each team competes against the other teams in the league, and prizes are awarded based on the performance of individual athletes or teams during a designated period. The Division determined that the leagues were illegal because they did not meet the requirements of a sports pool or Calcutta pool, both of which are authorized by law.

## **F. BINGO AND KENO PERMIT FEE AND TAX EXEMPTIONS**

Concerns arose during the year regarding eligibility for a cost-free live bingo and keno permit and exemption from the bingo and keno tax. Section 23-5-406, MCA, provides that an organization qualified under 26 U.S.C. 501(c)(3) or (c)(4) for a federal tax exemption on January 15, 1989, is exempt from the live keno and bingo tax and permit fee. An organization qualified for the federal exemption after that date is exempt from the tax and one-half the permit fee. Organizations qualified under 26 U.S.C. 501(c)(1), (c)(2), and (c)(5) through (c)(25) are subject to the tax and fee.

Because of concerns raised by organizations excluded from the fee and tax exemption, the Division examined the Internal Revenue Code in search of a reason for distinguishing among organizations. Under the federal code, (c)(3) and (c)(4) organizations are defined as those groups established solely for religious, charitable, scientific, educational, or civic purposes. The balance of the other groups, such as fraternal organizations, operate primarily for the benefit of their members.

## **G. WAY CARDS**

Way card betting is a method whereby a keno player places multiple wagers on a single keno card. The 1989 Legislature specifically addressed and rejected way card betting, choosing instead to limit the maximum wager per keno card at \$.50.

A variation of a way card is a "pick-six" keno card. Under this variation, a keno player uses a distinctive pick-six card or a regular card and simply notifies the caller that he or she is playing pick-six. Pick-six cards, which are normally sold for more than \$.50, allow a player to pick six numbers

and have the card count for up to eight cards (wagers). If all six numbers are drawn, the player wins \$100 for each "card" wagered upon.

The Division's position on this matter was that the law allows only one \$.50 wager per card and that a modification to the cards and elimination of certain game conditions were necessary if the pick-six variation was to be offered to the public. A keno card sheet replaced the pick-six card, and operators could no longer require that all eight cards be played with the same numbers. Under these rules, a person could play as many of the cards on the sheet as desired and choose a variety of numbers.

#### **H. CARNIVAL AND AMUSEMENT GAMES**

Gambling is statutorily defined in 23-5-112, MCA, as the act of "... risking money, credit, deposit, check, property, or any thing of value for a gain that is contingent in whole or part on lot, chance or the operation of a gambling device or gambling enterprise." Several amusement games commonly offered at carnivals and fairs in Montana and some retail establishments offered an opportunity for gain contingent in whole or part on chance. An example of this type of game is a balloon dart throw with concealed numbers behind the balloons. Skill predominates in breaking the balloons, but chance determines what prize is awarded based on the numbers behind the broken balloons.

The Division worked with a group of carnival and amusement game operators early in the year to delineate acceptable games (i.e., those contingent on skill, not chance) and establish procedures whereby new games could be approved. These guidelines were distributed to all carnival operators and fair boards.

## **I. MULTIPLE LIQUOR LICENSES**

According to the Department of Revenue, two liquor licenses may be issued to the same premises if there is a dividing line for the use of each license in the sale of alcohol and separate business records are kept for each license. No physical separation of the two areas served by the licenses is required. During fiscal year 1990, some gambling operators purchased a second liquor license for their premises. The operators claimed that the second license entitled them to a second gambling operator's license and permits for placement of up to 40 video gambling machines.

A premises is defined in 23-5-112, MCA, as a "physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the Department". (Emphasis added) The gambling statutes further provide that a maximum of 20 video gambling machines may be placed on a premises (23-5-611(3), MCA). In those cases in which dual liquor licenses were acquired for the same premises, the Division would not approve a second operator's license unless the areas for which the licenses were issued were physically and operationally separate.

## **J. FEDERAL INDIAN GAMING REGULATORY ACT**

In October 1988, Congress passed the Indian Gaming Regulatory Act (IGRA). The Act is a Congressional effort to promote economic development and provide for the regulation of gambling activities on Indian lands. IGRA applies to gambling on reservation lands and lands held in trust for the tribes by the Secretary of the Interior. Provisions of the Act establish a National Indian Gaming Commission and procedures for approving gambling activities on reservation lands.

IGRA segregates gambling activities into three classes. Class I consists of social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of or in connection with tribal ceremonies or celebrations. Class II gaming means bingo, card games that are explicitly authorized or not explicitly prohibited by state law (except house banking games), pull tabs, punch boards, tip jars, and instant bingo. Class III gaming consists of all forms of gaming that are not categorized as Class I or Class II, including but not limited to video gambling machines, house banking card games, and horse racing.

Class I gaming is allowed on the reservation and is within the exclusive regulatory jurisdiction of the Indian tribes. Class II gaming is allowed if each facility offering gambling is properly licensed and the funds from the games are properly designated to benefit the tribes. Class III gaming activities are allowed if "such activities are authorized by a tribal ordinance or resolution, located in a state that permits such gaming for any purpose by any person, organization, or entity, and conducted in conformance with a tribal-state compact entered into by the Indian tribe and the State". (Emphasis added) Because Montana authorizes certain types of Class III gaming activities (i.e., video gambling machines and horse racing), tribal-state compacts must be negotiated concerning the operation of these activities on tribal lands.

The Act suggests that the compacts include the following provisions:

- (1) application of the criminal and civil laws and regulations of the Indian tribe or state that are directly related to, and necessary for, the licensing and regulation of Class III gaming activities;

- (2) allocation of criminal and civil jurisdiction between the state and Indian tribe necessary for the enforcement of the laws and regulations;
- (3) assessment by the state of the gaming activities in the amounts necessary to defray the costs of regulating the activities;
- (4) taxation by the Indian tribe of the activities in amounts comparable to amounts assessed by the state for comparable activities;
- (5) remedies for breach of contract;
- (6) standards for the operation of the activities and maintenance of gaming facilities, including licensing; and
- (7) any other subjects that are directly related to the operation of gaming activities.

The state has been in contact with each tribe with a reservation within the exterior boundaries of Montana. To date, no compacts have been signed. However, a compact with the Fort Peck Tribes is close to adoption. It is currently being reviewed by the Attorney General and Governor to make certain the provisions do not conflict with other existing compacts (i.e., fish and game, water resource compacts).

Negotiations with the Fort Peck tribes have led to the identification and resolution of several regulatory issues. The compact will likely serve as a guide for other state-tribal agreements in Montana.

## **V. PROPOSED LEGISLATION**

The Department will be proposing several changes to the gambling statutes during the 1991 legislative session. These proposals clarify existing statutes and provide a clearer direction for the regulation of gambling in Montana. The following is a brief description of the Department's major legislative proposals.

### **A. DEPARTMENT OF JUSTICE: POWERS AND DUTIES**

**Criminal Justice Powers.** Section 23-5-113 of the Montana Code Annotated (MCA) provides that the Department of Justice is a criminal justice agency. It also grants designated agents of the Department peace officer status with the authority to investigate gambling governed by Title 23, chapter five, parts one through six. The Department proposes that this section be amended to clarify that its investigative authority includes other gambling-related matters (e.g., video gambling machine burglary, intimidation, theft, and deceptive business practices).

**Release of Tax License Information.** The Department seeks limited statutory authority to allow the federal Internal Revenue Service, Montana Department of Revenue, and criminal justice agencies to obtain license application and tax information from the Department.

**Inspections.** Under the Department's legislation, the authority to inspect licensed premises, records, and gambling devices is clarified.

**Warrant For Distrain.** A warrant for distraint is an administrative tool used for tax collection purposes. It is an order placing a lien against all real and personal property of a delinquent taxpayer. The Department requests the same warrant for distraint powers granted the Montana Department of Revenue.

## **B. GAMBLING DEFINITIONS**

**Public Gambling.** The Department proposes that the definition of public gambling (23-5-112(27), MCA) be amended to include gambling conducted in a place to which the public does not have access if players are publicly solicited or gambling is conducted in a predominantly commercial manner.

**Gift Enterprise.** Under 23-5-112(21), MCA, the term "gift enterprise" and "lottery" share the same definition. The Department suggests that "gift enterprise" be redefined as a form of gambling in which persons obtain chances to win prizes by purchasing goods or services.

**Promotional Games of Chance.** The Department proposes to exempt a promotional game of chance from the definition of gambling. The term "promotional game of chance" is defined as an activity in which no consideration is required or expected in exchange for the opportunity to win prizes.

**Sports Pool.** Under the Department's legislation, the definition of sports pool is made more explicit and the value of a sports pool is defined.

**Illegal Gambling Device/Enterprise.** The Department recommends that the definitions of illegal gambling device and illegal gambling enterprise be expanded to list examples of such devices and enterprises.



## C. LICENSES AND PERMITS

**Licensure Qualifications.** Section 23-5-176, MCA, provides general statutory criteria for determining whether an applicant is qualified for a gambling license. The Department proposes that more explicit criteria be provided to guide the Department in making these determinations. Under the Department's legislation, an applicant would be denied a license if the person has been convicted of a felony offense or a gambling-related misdemeanor within five years of the date of application, is awaiting trial on charges of committing a felony offense, or is on probation, parole, or deferred prosecution for committing a felony offense. In addition, the legislation provides that certain provisions relating to occupational licensing (37-1-203 and 37-1-205, MCA) do not apply to issuance of a gambling license.

**Application Falsification.** The Department suggests that falsifying a gambling license or permit application be grounds for denying the license or permit.

**Licensing Investigative Costs.** Before issuing a gambling operator's license, the Department must determine if the applicant is qualified under 23-5-176, MCA. Occasionally, the background investigation conducted on a potential licensee requires out-of-state travel and other expenditures. The Department recommends that the applicant pay the actual cost of the investigation.

**Provisional Operator's License.** Currently, the Department issues a provisional operator's license pending completion of an applicant's background investigation. However, no explicit statutory authorization exists for issuing provisional licenses. The Department seeks legislative approval or rejection of this practice.

**Licensure at Different Marketing Levels.** Current law permits a person to obtain licenses to operate businesses at different marketing levels of the gambling industry. For example, a licensed video gambling machine manufacturer could own an establishment and provide gambling to the public as well as place machines in other licensed establishments. To maintain the competitive nature of the gambling industry and enhance accountability, the Department proposes that a person licensed at one marketing level of the gambling industry be prohibited from obtaining a license to operate at a different marketing level or have a substantial interest in a business operating at a different marketing level. The marketing levels are defined as manufacturers and distributors, route operators, and premises owners. This proposal, for example, would prohibit a video gambling machine vendor (i.e., route operator) from becoming financially involved with a gambling location by issuing loans to the location and thereby exerting control over the location in much the same manner as an owner.

**License and Permit Restructuring.** Currently, a manufacturer-distributor's license is issued to persons in three different occupations: those persons who manufacture video gambling machines; those who market the machines at the wholesale level; and those who own machines and place them in licensed establishments. The Department recommends that each occupation be issued a separate license (i.e., manufacturer's, distributor's, or route operator's license). Additionally, the Department proposes to institute and/or increase permit and license fees to meet the agency's future funding needs.

**Video Gambling Machine/Live Card Game Grandfather Provisions.**

In general, a person who operates a live card game table or video gambling machine must have a license to sell alcoholic beverages for on-premises consumption. Certain "grandfather" provisions, however, allow card game table and video gambling machine permits to be issued to a person who legally operated a table or machine on January 15, 1989, but did not have a liquor license (23-5-306 and 23-5-611, MCA). These grandfather provisions are clarified in the Department's legislation.

**Premises Approval.** Section 23-5-112, MCA, defines premises as "the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the Department."

(Emphasis added) The Department's legislation provides criteria for approving a premises for issuance of an operator's license.

**D. LIVE BINGO AND KENO**

**Exempt Organizations.** The Department's legislation exempts the following organizations and facilities from the live bingo and keno permit fee and tax: (1) veterans' organizations; (2) fraternal organizations; (3) nursing homes; (4) retirement homes; and (5) senior citizens centers.

**Authorized Bingo and Keno Equipment.** Section 23-5-112, MCA, defines authorized equipment, with respect to live keno or bingo, as "equipment that may be inspected by the Department and that randomly selects the numbers." To date, the Department has not inspected any keno or bingo equipment, although it has been requested to do so by some wholesalers

and operators. The Department recommends that a license be issued to persons who manufacture or supply electronic bingo or keno equipment and that such equipment be examined and approved before being used in the state.

Way Cards. The Department proposes that way cards used for placing multiple wagers in live keno games be authorized. (For a discussion on this form of wagering, see "Way Cards" in Chapter IV.)

Elimination of Net Income Tax. Section 23-5-409, MCA, requires a bingo or keno operator to pay a tax equal to the greater of one percent of the gross proceeds from the game or five percent of the game's net income. To simplify calculation of the tax and recordkeeping requirements, the Department recommends that the five percent net income tax be eliminated and that taxes be paid only on one percent of gross proceeds.

#### E. MISCELLANEOUS

Fine/Penalty Distribution. Under 23-5-123, MCA, penalties, fines, and forfeitures collected through a civil, criminal, or administrative proceeding for violation of a gambling statute or rule are split equally with the state general fund and the county in which the violation occurred. The Department proposes that cities share in this distribution.

Antique Slot Machine Sales. The Department's legislation permits antique slot machines to be sold by those persons or entities who are currently permitted to own them (i.e., private individuals, licensed manufacturer-distributors, and public museums). It also establishes a definitive date (i.e., January 1, 1965) before which a slot machine must have been manufactured to qualify as an antique.

**Casino Nights.** Casino nights are fundraising events conducted by nonprofit organizations that offer an evening of casino-style gambling (e.g., Blackjack, craps, poker) to persons who pay an entrance fee to participate. Often participants receive imitation or "fun" money to use in placing their wagers. Proceeds from the evening, minus administrative expenses and prizes, are used to benefit the sponsor's projects or donated to altruistic causes. With passage of Senate Bill No. 431 in 1989, casino nights were deemed illegal because they were not specifically authorized by law. The Department proposes that nonprofit organizations be permitted to conduct casino nights that offer legal forms of gambling (i.e., live card games, live bingo and keno, and raffles) without obtaining various licenses and permits or paying gambling taxes on proceeds earned.

**Machine Testing Fees.** The Department requests statutory spending authority over video gambling machine testing fees to help defray the unanticipated costs of testing.

**Gambling Employees and Revenues.** Department legislation would require all persons who conduct gambling activities to be employees of the licensed operator and require that all revenue generated from gambling activities be initially received by the operator.

**Participation by Minors in Raffles.** Section 23-5-158, MCA, provides that "a person may not purposely or knowingly allow a person under 18 years of age to participate in a gambling activity." The Department proposes that this prohibition be eased to permit minors to participate in noncommercial raffles.

Promotional Game Payouts. The Department recommends that promotional games (i.e., games in which participants pay no consideration) involving live card games, bingo, or keno be subject to the same statutory payout limits imposed on those games for which consideration is paid.

Gambling on Elementary/High School Sports Events. Section 23-5-221, MCA, prohibits wagering in a Calcutta pool on elementary school or high school sports events. The Department recommends that this ban be extended to sports pools.

Transfer of Ownership Interest. The Department proposes that a licensed operator be required to notify the Department before transferring any ownership interest in his or her premises.